

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN (DETROIT)**

In Re:

Dailey Law Firm PC

Debtor.

Case No. 23-45970-mlo

Chapter 11

Hon. Maria L. Oxholm

/

NOTICE OF SUBPOENA

To: Parties of Interest:

Please take notice, pursuant to Federal Rule of Civil Procedure 45, that John W. Polderman, Court Appointed Receiver intends to serve a Subpoena, in the form attached, on Huntington National Bank, Attn: EA4W34, 7 Easton Oval, Columbus, Ohio 43219, on July 19, 2023, or as soon thereafter as service may be effectuated.

Respectfully Submitted,

**SIMON PLC ATTORNEYS &
COUNSELORS**

By: /s/ John W. Polderman
JOHN W. POLDERMAN (P65720)
Court Appointed Receiver
363 West Big Beaver Road, Ste. 410
Troy, MI 48084
(248) 720-0290
jpolderman@simonattys.com

Dated: July 19, 2023

UNITED STATES BANKRUPTCY COURT

Eastern

District of

Michigan

In re Dailey Law Firm PC

Debtor

(Complete if issued in an adversary proceeding)

Case No. 23-45970-mlo

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT
INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Huntington National Bank Attn: EA4W34, 7 Easton Oval, Columbus OH 43219

(Name of person to whom the subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

| | | |
|-------|--|---------------------------------------|
| PLACE | Simon PLC 363 W. Big Beaver Road, Suite 410 Troy, MI 48084 | DATE AND TIME |
| | | August 4, 2023 by end of business day |

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

| | |
|-------|---------------|
| PLACE | DATE AND TIME |
| | |

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 7/19/23

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, email address, and telephone number of the attorney representing (name of party)
Court Appointed Receiver , who issues or requests this subpoena, are:

John W. Polderman, Simon PLC, 363 W. Big Beaver Road, Suite 410, Troy, MI 48084 (248) 720-0290

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any*): _____
on (*date*) _____.

I served the subpoena by delivering a copy to the named person as follows:
Huntington National Bank, Attn: EA4W34, 7 Easton Oval, Columbus OH 43219

on (*date*) July 19, 2023; or

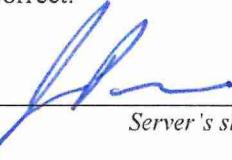
I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: 7.19.2023



Server's signature

John W. Polderman, Court Appointed Receiver
Printed name and title

363 W. Big Beaver Road, Ste. 410, Troy MI 48084
Server's address

Additional information concerning attempted service, etc.: _____

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT "A" TO SUBPOENA

If Deponent produces all below listed information prior to August 4, 2023 by end of business day, deponent may be excused from appearing on the Augus 4, 2023 production date.

Deponent is required to make a diligent search of its records and produce* the following documents by:

**Produce the following in electronic (or digital) form (unless the documents only exist in paper form, in which case produce in paper form):*

- 1. Any and all bank statements, deposit slips, copies of signature cards, and copies of checks for any account that Brian Dailey has signing authority for from January 1, 2020 to present.**

As used in the attached Subpoena,

“Document” means any paper, writing, tape, and/or thing of any, nature, description or kind, and any non-identical copies thereof, including, but not limited to, reports, investigative reports, audits, analyses, reviews, notes, papers, statements, conclusions, files, telephone messages, telecopies, inter- and intra- office memoranda, handwritten notations, file folders, file jackets, work papers, invoices, questionnaires, journals, diaries, correspondence, treatises, messages, voice messages, drafts of documents, canceled or superseded documents, memoranda, photographs, charts, tabulations, sketches, statements, audio tapes, video tapes, digital data, electronic data, computer disks, electronic mail (e-mail), text messages, internet communications, instant messages, and all other types and/or forms of computer generated and/or stored and electronically generated and/or stored and digitally generated and/or stored data and materials, and any other manner of written or recorded material or things.

Any entity listed above includes that entity's affiliated companies, shareholders, agents, principals, representatives, officers, employees and attorneys.

**UNITED STATES BANKRUPTCY COURT
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In Re:

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Debtor.

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Hon. Maria L. Oxholm

/

CERTIFICATE OF SERVICE

I certify that on July 19, 2023, I electronically filed the *Notice of Subpoena* with ***Subpoena*** to be issued to, Huntington National Bank, Attn: EA4W34, 7 Easton Oval, Columbus, Ohio 43219; and this Certificate of Service with the Clerk of the Court using the ECF system which will send notification of such filing to all parties of interest.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Respectfully Submitted,

SIMON PLC

By: s/ John W. Polderman
JOHN W. POLDERMAN (P65720)
Court Appointed Receiver
363 W. Big Beaver Rd., Ste. 410
Troy, MI 48084
(248) 720-0290
jpolderman@simonattys.com

Dated: July 19, 2023